

PUBLIC CHAPTER NO. 1108

HOUSE BILL NO. 1256

**By Representatives Moore, Sontany, Mike Turner, Sherry Jones,
Gilmore, West, Pruitt, Coley, Hardaway, Favors, Lynn, Hensley**

Substituted for: Senate Bill No. 1363

**By Senators Haynes, Burchett, Harper, Herron, Marrero, Norris,
Woodson, Johnson, Kurita, Ford, Black**

AN ACT to amend Tennessee Code Annotated, Title 2, relative to election procedures and equipment and to enact the "Tennessee Voter Confidence Act of 2007".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Voter Confidence Act".

SECTION 2. Tennessee Code Annotated, Section 2-1-104, is amended by adding the following definitions, appropriately numbered:

(_) "Precinct-based optical scanner" means an optical ballot scanner that is located in the precinct and into which optical scan voter-verified paper ballots, marked either by hand by the voter or with the assistance of a device, are inserted to count the voter verified paper ballot;

(_) "Top race" means the presidential race, if the presidential race is on the ballot; the governor's race, if the governor's race is on the ballot; and in addition to such races, if other races are on the ballot, the race which receives the most votes as determined by the unofficial machine vote count for each political subdivision election held and on the ballot;

(_) "Voting system" means a precinct-based optical scanner;

(_) "Voter-verified paper ballot" means a permanent, individual paper ballot that is marked either manually by the voter or with the assistance of a device and verified by the voter as correctly reflecting the voter's intent, before the voter's vote is counted by the precinct-based optical scanner;

SECTION 3. Tennessee Code Annotated, Title 2, is amended by adding the following language as a new, appropriately designated chapter thereto:

§ 2-__- 101.

(a) Notwithstanding any other provision of state law to the contrary and consistent with federal law, after January 1, 2009 any voting system purchased or leased shall be a system using precinct-based optical scanners.

(b)

(1) Each county shall use a precinct-based optical scanner voting system on or before the November 2010 general election.

(2) It is the intent of the general assembly that in the purchase or lease of such voting systems the state of Tennessee comply in all respects with federal law.

§ 2-__ - 102.

All voting systems shall meet the minimum federal law requirements with regard to enabling voters with disabilities to complete the voting process in a manner that maintains the privacy of the voter's ballot.

§ 2-__ - 103.

(a) For each election, each county election commission shall conduct mandatory hand count audits of the voter-verified paper ballots of at least the top race in the federal, state, county or municipal election, if on the ballot, which hand count audits shall include three percent (3%) of the votes cast prior to the election for the races to be audited, and also be conducted in at least three percent (3%) of the precincts, as follows:

(1) The selection of the precincts in a county in which the county election commission shall conduct hand count audits of the voter-verified paper ballots as specified in this section shall be made public by the county election commission on an entirely random basis using a uniform distribution in which all precincts in a county have an equal chance of being selected.

(2) As soon as practical, following the closing of the polls, the county election commission shall:

(A) Complete the initial vote count for each and every precinct participating in the election in that county and publicly announce the unofficial results of each such initial vote count as soon as such results are available;

(B) Conduct a random drawing as specified by this section to determine which precincts will be selected and publicly announce the results of the drawing;

(C) Initiate such mandatory hand count audits of the voter-verified paper ballots of the top race and any other race, if additional races are selected for audit by the county election commission, in the precincts selected when all ballots, including provisional ballots, have been counted; and

(D) Publicly announce the results of each such mandatory hand count audit.

(3)

(A) If the county election commission finds as a result of its hand count audit that there is a variance of less than one percent (1%) between the voter-verified paper ballots counted for any race included in the hand count audit and the initial unofficial machine vote count in any of the precincts selected for the random audit, the election shall be certified for that race and no additional hand count audit shall be required for that race.

(B) If, pursuant to subdivision (A), the variance is more than one percent (1%) between the hand count audit and the unofficial machine vote count for any race, the county election commission shall conduct hand count audits in the manner provided in this section at an additional three (3) or more percent of precincts, as the county election commission considers appropriate, within the county for the same races audited under subdivision (A) where the variance was more than one percent (1%), to resolve any concerns and ensure the accuracy of the results for certification.

(C) If the variance in the audits conducted pursuant to subdivision (B) is more than one percent (1%) between the hand count audit and the unofficial machine vote count, the county election commission is authorized to conduct a hand count audit in as many precincts as the commission considers appropriate, to resolve any concerns and ensure the accuracy of the results for certification.

(D) Pursuant to subsection (b), following such hand count audits and the announcement of the results and the availability of such results, the election shall be certified and the election results published. If an election contest is filed pursuant to title 2, chapter 17, part 1, the results of such hand count audits shall be considered by any court, primary board, legislative body or tribunal having jurisdiction of an election contest to determine whether a recount is warranted in accordance with § 2-17-117.

(b) As soon as practicable after the completion of a hand count audit conducted under this section, the county election commission shall publicly announce and make available the results of the audit, and shall include in the announcement a comparison of the results of the election in the precinct as determined by the county election commission under the hand count audit and the initial voting system count in the precincts as previously announced by the county election commission.

(c) No county may certify the results of any election which is subject to an audit under this section prior to the completion of the hand count audit and the announcement and the availability of the results of the hand count audit.

(d) A county election commission shall implement the process for mandatory random hand count audits no later than the general election in 2010.

§ 2-__ - 104.

(a) All electronic voting systems in use on or after the effective date of this act:

(1) Shall be certified pursuant to § 2-9-110 and shall have been certified by the election assistance commission as having met the applicable voluntary voting systems guidelines; in addition the precinct-based optical scanners shall be tested to ensure the scanners operate in accordance with such guidelines; and

(2) Shall, with all relevant documentation, be made available by their vendors, at the request of the state election commission or the secretary of state for review by an independent expert, selected by the state election commission or the secretary of state, to ensure the functionality and security of its systems.

The state coordinator of elections shall enact necessary rules and regulations to require that all required

tests are properly conducted on the precinct-based optical scanners as well as requiring a sufficient review is conducted of the voting systems and the relevant documentation to ensure compliance with this subsection.

(b) Prior to each election, all electronic voting equipment purchased, leased or used by the county election commissions shall be subject to acceptance testing by such commission in accordance with rules and regulations promulgated by the state coordinator of elections.

(c) With respect to precinct-based optical scanner voting systems purchased or leased pursuant to this act, vendors shall provide access to all information required pursuant to subsection (a) and rules and regulations promulgated pursuant to such subsection, which shall be placed in escrow with an agent designated by the secretary of state.

(d) No electronic voting equipment used in an election in Tennessee shall have any capability, enabled or disabled, for wireless communication of any sort.

§ 2-__ - 105. The Coordinator of Elections shall provide a list of authorized printers for the county election commissions to utilize for the printing of ballots. The Coordinator of Elections is authorized to explore the feasibility of utilizing ballot on demand technology.

SECTION 4. Tennessee Code Annotated, Section 2-17-105, is amended by deleting the language “within ten (10) days after the election” and substituting instead the language “within five (5) days after certification of the election”.

SECTION 5. Tennessee Code Annotated, Section 2-8-101(a), is amended by deleting the language “The county election commission shall meet at its office on the first Monday after an election or upon completion of its duties under § 2-8-104, but no later than the second Monday after the election” and substituting instead the language “The county election commission shall meet at its office upon completion of its duties under § 2-8-104, but no later than the third Monday after the election”.

SECTION 6. The secretary of state and the state election commission are authorized, with the various county election commissions, to implement the provisions of this act for any new voting systems purchased or leased after the effective date of this act in accordance with § 2-__-101(a)(1). In addition, they are authorized to expedite the replacement or modification of any systems that are not in compliance with this act, but no later than the general election of 2010. Provided, however, notwithstanding any provision of this act or any other law to the contrary, the requirements of this act mandating the purchase or lease of new voting systems shall be implemented if and only if federal “Help America Vote

Act" (HAVA) funds previously allocated, or other federal funding resources, are available to pay the full cost of purchasing or leasing such new voting systems.

SECTION 7. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it; for all other purposes this act shall take effect January 1, 2009, the public welfare requiring it.

PASSED: May 20, 2008


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 5th day of June 2008


PHIL BREDESEN, GOVERNOR